

Summary of U.S.-Chile FTA Competition Policy Chapter

The Competition Policy Chapter will help to ensure that the opportunities created by trade liberalization are supported by healthy competitive domestic markets, allowing the firms of each Party to compete freely and unhampered by anticompetitive business conduct in the other Party's territory. Firms that are subject to antitrust enforcement action will be guaranteed some basic procedural safeguards. Although state monopolies and state enterprises do not account for a significant portion of either Party's economy, the provisions governing these entities will also help to ensure that they do not abuse their special status to harm the trade and investment interests of the other Party, for example by favoring domestic firms in the sale or purchase of goods and services.

This chapter follows the NAFTA chapter on this subject by requiring each Party to

- enforce a domestic antitrust law that prohibits anticompetitive business conduct
- cooperate in the enforcement of its antitrust law
- ensure that any private or public monopolies designated by the Party, and any state enterprises, be subject to disciplines designed to eliminate abuses of their special status that discriminate against or harm the interests of the other Party.

The Chapter recognizes that the conduct that it covers has the potential to restrict bilateral trade and investment, and seeks to secure the benefits of the FTA by prohibiting such conduct, encouraging economically sound competition policies, and furthering cooperation. The Chapter expands on the NAFTA by affirming that the Parties' antitrust enforcement policy is not to discriminate on the basis of nationality. The Chapter also guarantees some basic procedural rights for firms that are subject to antitrust enforcement actions: each Party will provide a right to be heard and to present evidence before imposing a sanction or remedy, and will ensure that any sanctions or remedies are imposed by or subject to review by an independent court or tribunal.

The Chapter also provides for consultations and furthers transparency interests by allowing either Party to request from the other specific public information regarding antitrust enforcement activity, official monopolies and state enterprises, and any exemptions from their antitrust laws.

The provisions regarding antitrust law and enforcement are not subject to dispute settlement, and will require no changes to existing antitrust law and enforcement policy in the U.S. It is our belief that the Chilean system today meets the requirements of these provisions.